

Recovery orders

This fact sheet explains what a recovery order is and who can apply for a recovery order. It also includes information about what you can do when a child has been taken from Australia without consent, or has not been returned to Australia.

Note – Before applying to the Court for a recovery order, you should seek legal advice. If a child is in immediate danger, you should contact the State or Territory police and/or the State or Territory Child Welfare Department.

What is a recovery order?

A recovery order is defined in section 67Q of the *Family Law Act 1975*. It is an order of the Court that can require a child be returned to a:

- parent of the child
- person who has a parenting order that states the child lives with, spends time with or communicates with that person, or
- person who has parental responsibility for the child.

A recovery order can authorise or direct a person or persons, such as police officers, to take appropriate action to find, recover and deliver a child to one of the people listed above. As well, a recovery order can provide directions about the day-to-day care of a child until the child is returned or delivered.

A recovery order can also prohibit the person from again removing or taking possession of the child. In these cases, a recovery order can authorise the arrest (without warrant) of the person who again removes or takes possession of the child.

Who can apply?

You can apply for a recovery order if you are a:

- person who the child lives with, spends time with or communicates with as stated in a parenting order
- person who has parental responsibility for the child in a parenting order
- grandparent of the child, or
- person concerned with the care, welfare and development of the child. For example, you may be the person who the child lives or spends time with but there is no parenting order that states this.

How do I apply?

An application for a recovery order should be filed in the Federal Circuit Court. If you have a current parenting case in the Family Court, the application should be filed in that court. If you do not have a current parenting order, you should apply for one at the same time as applying for a recovery order.

On the application form, you must say what orders you are asking the Court to make. For example:

The Marshal of the Court, all officers of the Australian Federal Police and all state and territory police officers are requested to find and recover [*child/ren & date of birth*] and deliver the [*child/ren*] to the [*father/mother/other*] and for that purpose to stop and search any vehicle, vessel or aircraft and to enter and search any premises or place in which there is at any time reasonable cause to believe that the [*child/ren*] may be found.

You must also file an affidavit to support your application. You should include details of the following points, if applicable:

- A brief history of the relationship between you and the person the child is presumed to be with
- A list of previous court hearings and family law orders
- Details about the child and where he/she usually lives
- How and when the child was taken from you or not delivered to you
- Where the child might be and the basis for that belief
- Steps (if any) that have been taken to find the child
- Why it is in the child's best interests to be returned to you
- The likely impact on the child if a recovery order

How do I apply? (CONTINUED)

is not made

- Any other factors relevant to the case.

Note – This is not a complete list and may vary depending on the circumstances of each case. It is essential that all relevant facts are disclosed, particularly evidence relating to any complaint that the person with the child might have about you.

Your chances of recovering the child will improve if you have information about where the child is likely to be. You should collect as much information as possible to help authorities find and return the child.

What happens at court?

In deciding whether to make a recovery order, the Court must regard the best interests of the child as the paramount consideration. The Court may make an order which allows or requires a person to return the child to you at a designated time and place. In some cases, the Court may make a recovery order which authorises or directs a person or persons, such as police officers, to take appropriate action to find, recover and deliver the child to you.

Note - The Court is not a child recovery agency. If the Court makes an order authorising or directing another person or persons to find, recover and deliver the child, you must give a copy of the order to that person or persons. In most instances, this will be the Australian Federal Police (AFP).

The AFP will not generally recover a child, except in exceptional circumstances, until you are able to receive the child and are close by. This means you may need to travel to collect the child when he or she is recovered.

The AFP has offices in each capital city and some regional locations. Go to www.afp.gov.au or look in the White Pages for contact details.

When the child is returned to you, you must notify registry staff at the Court as soon as practicable.

Can I stop the child being taken overseas?

You can take steps to prevent a child being taken overseas. For more information, see the fact sheet 'Children and international travel after separation'.

What if the child still isn't found?

In some situations, you may ask the Court to issue other orders to help locate the child; for example:

- **Location order** – requires a person to give the Court information about the child's location
- **Commonwealth Information order** – requires a Commonwealth Government Department, such as Centrelink, to give the Court information about the child's location that is contained in or comes into the records of the Department
- **Publication order** – allows the media to publish details and photographs of the missing child and the person they are believed to be with. However, each case is different and the terms of the publication order can vary. This is usually a last resort and you should seek legal advice first.

What if the child has been taken from Australia?

If a child has been taken from Australia without your consent, or has not been returned to Australia, you should contact the Commonwealth Attorney-General's Department for assistance.

Australia has an agreement with some countries to return abducted children to their country of usual residence. The agreement is called the Convention on the Civil Aspects of International Child Abduction (the Hague Convention). For a list of countries party to the convention, go to www.ag.gov.au (look under the international child abduction link) or call the Department on 1800 100 480.

If the child is not in a Hague Convention country, you should seek legal advice.

More information

Court staff can help you with questions about court forms and the court process, but cannot give you legal advice or take direct action to recover a child.

If you require legal assistance, you should seek advice from a lawyer. You can seek legal advice from a legal aid office, community legal centre or private law firm.